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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/986,264	11/08/2001	Pascal Simon	209858US55	6595
22850	7590	01/28/2004	EXAMINER	
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			JOYNES, ROBERT M	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 01/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/986,264

Applicant(s)

SIMON, PASCAL

Examiner

Robert M. Joynes

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-114 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-40 and 52-114 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) 41-51 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 06/25/03. 6) ☐ Other:

### **DETAILED ACTION**

Receipt is acknowledged of applicants Election filed on November 13, 2003.

#### ***Election/Restrictions***

This application contains claims 41-51 drawn to an invention nonelected with traverse in the paper filed on November 13, 2003. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01. Applicants elected Group I with traverse with no arguments as to why the restriction is improper. Therefore, the restriction is deemed proper and made final.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-40 and 52-114 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beck et al. (WO 01/54661 A1) in combination with Schneider (US

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2790982). Beck teaches a cleansing article comprising a substrate sheet with two layers, a cleansing component disposed adjacent to the substrate sheet and a therapeutic component disposed adjacent the substrate sheet (Page 2-3, Invention Summary). The article is used to cleanse and condition the skin and hair by wetting the article with water and contacting the skin or hair with the wetted article. (Page 2-3, Invention Summary). Various materials can be used for the first and second layer of the substrate sheet (Pages 4-11). The layers are bonded together in various ways as well (Pages 11-12). The cleansing component can be a surfactant of various types (Pages 12-22). The therapeutic agents are defined on Pages 23-34. The article can further contain multiple chambers containing different surfactants and/or conditioning agents (Page 36). The concept of the Beck reference is a multi-layer substrate comprising at least two layers wherein a surfactant and conditioning therapeutic agents are associated with the substrate so that when wetted the article can cleanse and condition the hair and skin of the user.

Schneider teaches a similar device wherein a multi-layer substrate is taught to include a breakable capsule wherein a liquid is dispensed to administer a cosmetic or conditioning composition (Col. 1, lines 27-30; Col. 2, lines 3-11, 58-70). The article has multiple layers and surfaces wherein the interior layers are impervious to the composition contained in the article while the outer layers are permeable to the composition. The article can be used for various applications including delivery of a liquid or paste for cleaning, or shoe polishing or skin care (Col. 4, lines 22-45). The concept of the device is to have multiple layers that serve the same or different purpose

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(applicator, polisher, absorber, etc.) that contains a capsule filled with a liquid that can be ruptured or burst to deliver the liquid to provide a cleansing article for the skin. \

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to combine the concept of a multi-layer substrate with a surfactant and/or therapeutic agents disposed between the layers so that when wetted provide a cleansing article for the skin with the concept of a multi-layer substrate with a capsule to deliver a liquid to provide a cleansing article for the skin. Therefore, it would be obvious to prepare an article that has a multi-layer substrate with a surfactant and/or therapeutic agent associate with the substrate wherein the device also has a capsule that is breakable to deliver the liquid needed to wet the device and provide a cleansing property.

One of ordinary skill in the art would have been motivated to do this to provide a disposable, easily stored device for the home or for travel in one package for ease of use and convenience (Schneider, Col. 4, line 67 – Col. 5, line 4).

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

### ***Correspondence***

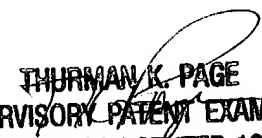
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Joynes whose telephone number is (703) 308-8869. The examiner can normally be reached on Mon.-Thurs. 8:30 - 6:00, alternate Fri. 8:30-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Robert M. Joynes  
Patent Examiner  
Art Unit 1615

  
**THURMAN K. PAGE**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**